

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

v. CRIMINAL NO. 05-2 ERIE

KEITH ALLEN PROCTOR

SENTENCING

Proceedings held before the HONORABLE  
SEAN J. McLAUGHLIN, U.S. District Judge,  
in Courtroom C, U.S. Courthouse, Erie,  
Pennsylvania, on Wednesday, January 10, 2007.

APPEARANCES:

CHRISTIAN A. TRABOLD, Assistant United States  
Attorney, appearing on behalf of the Government.

THOMAS W. PATTON, Assistant Federal Public

Ronald J. Bench, RMR - Official Court Reporter

2

1 PROCEEDINGS

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3 (Whereupon, the Sentencing proceedings began at  
4 1:30 p.m., on Wednesday, January 10, 2007, in Courtroom C.)

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6 THE COURT: This is the time set for sentencing in  
7 the case of United States v. Keith Allen Proctor. As a  
8 preliminary matter, I note that there have been no objections  
9 filed to the guideline computations made by the probation  
10 officer on behalf of either the defendant or the United States;  
11 is that right, Mr. Trabold?

12 MR. TRABOLD: That's correct, your Honor.

13 THE COURT: Mr. Patton, no objections to the

14 computations?

15 MR. PATTON: That is correct, your Honor, as to the  
16 computations agreed to by the parties.

17 THE COURT: All right. That having been said, I  
18 make the following findings. The total offense level  
19 applicable here is 30. With a criminal history category of  
20 III. The statutory provision as to custody at each of Counts  
21 One and Two not less than 5 to 20 years imprisonment. At Count  
22 Three not more than 10 years imprisonment. The guideline  
23 provisions 121 to 151 months. With respect to the statute,  
24 probation is ineligible at each of Counts One, Two and Three.  
25 Similarly, ineligible under the guidelines. The statutory

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1 provision as to supervised release at each of Counts One, Two  
2 and Three, any term of years or life. Guideline provisions at  
3 each of Counts One, Two and Three, life. The statutory  
4 provision as to a fine at each of Counts One, Two and Three,  
5 \$250,000, for a total of \$750,000. The guideline provisions  
6 are \$15,000 to \$150,000. Restitution is inapplicable under  
7 both the statute and the guidelines. And a special assessment

8 of \$100 applies with respect to both the statute and the

9 guidelines.

10 Mr. Trabold, I've been informed that there has been

11 an agreement between the government and the defendant as to the

12 sentence in this case. Would you put the terms of that

13 agreement on the record?

14 MR. TRABOLD: Your Honor, the terms of the

15 agreement, as I understand them, are Mr. Proctor and the

16 government have agreed to a sentence of 198 months

17 incarceration, and really that's the only term of the

18 agreement. All other issues, with regard to supervised release

19 or any other sentencing issue, has been left open and each

20 party is able to argue whatever position they want with regard

21 to that.

22 THE COURT: But the agreement is then related solely

23 to the period of incarceration being 198 months. There's no

24 agreement with respect to any other aspect of the sentence.

25 And just to round it out, as I understand it, the 198 month

1 sentence is based upon an agreement between the United States

2 and the defendant that a three-level upward departure is

3 appropriate pursuant to United States Sentencing Guideline

4 2G2.2, Application Note 2, is that correct?

5 MR. TRABOLD: Well, I think the way you can arrive

6 at the sentence, just at a 198 months, even under the

7 guidelines, is this. The guideline calculated by the probation

8 department contemplates an increase in the base offense level

9 for Mr. Proctor's distribution of images of child pornography.

10 I believe under the guideline it calculated a two-point

11 increase for that. The agreement that we've reached with Mr.

12 Proctor and, obviously, defense counsel, is that he will

13 receive another two points for distribution, for the

14 expectation of the return of a thing of value, which would make

15 the distribution enhancement to the base offense level of four

16 total points instead of two. He would then receive another

17 enhancement of three offense levels for engaging in sexual

18 activities with minors that may not rise to the level of a

19 pattern of activity, but as contemplated under the guideline

20 application notes, an increase may be warranted even if it's

21 not the five-level increase, if there is some level of activity

22 that does not justify the five-level activity. And in this

23 case the agreement is that the increase, instead of being five

24 levels for that aspect, it should be three.

25 THE COURT: But as a practical matter, it isn't of

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1 any particular moment to the parties how the 198 month sentence

2 is justified, as long as there is a 198 month sentence, is that

3 right?

4 MR. TRABOLD: That is correct.

5 THE COURT: Mr. Patton, is there something you want

6 to add to this?

7 MR. PATTON: Your Honor, I would just say that the

8 guideline calculations that you just read --

9 THE COURT: Yes, sir.

10 MR. PATTON: Incorporated Mr. Proctor receiving a

11 five-level increase for distribution with the expectation of

12 something in return. That's how you get to 30. As originally

13 written --

14 THE COURT: It was a 27.

15 MR. PATTON: Correct.

16 THE COURT: And just to round this out, as I recall,

17 the probation officer had originally attributed two points, the

18 agreement between the parties -- the agreement which drives the  
19 total offense level of 30, is an agreement between the  
20 government and the defendant that a five-level enhancement is  
21 appropriate, is that correct?

22 MR. PATTON: That is correct.

23 THE COURT: All right. I noticed when I came out  
24 here I grabbed my wrong note pad, you don't have to get up, I'm  
25 going to run and get my other notes, then we'll complete the

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1 sentencing.

2 (Whereupon, a brief recess was taken.)

3 MR. PATTON: Your Honor, there is one other aspect  
4 that I want to clarify. In that the 198 months and reaching  
5 that by departing upward, is based on Mr. Proctor's prior  
6 conviction for indecent assault and corruption of minors.

7 But is not based on any of the allegations regarding --

8 THE COURT: I understand that. The agreement is  
9 based on that conviction for indecent assault and the  
10 enhancement -- I'm going to use the term upward departure,  
11 which is probably inappropriate in post Booker, but the

12 increased sentence is driven in part by Application Note 2,

13 is that correct?

14 MR. PATTON: Yes, that is correct.

15 THE COURT: Given this change, I'm going to have to

16 ask Mr. Proctor some questions now, would you please have him

17 come up to the podium. Would you swear him in, please.

18 DEPUTY CLERK: Would you please raise your right

19 hand.

20 (Whereupon, the Defendant, KEITH ALLEN PROCTOR, was

21 sworn.)

22 THE COURT: Mr. Proctor, I'm going to ask that you

23 speak directly into the microphone and keep your voice up.

24 Given the agreement that your counsel and yourself and the

25 government have entered into, it's required that I ask you some

1 questions pursuant to United States Sentencing Guideline 6B1.1

2 and Rule 11. Because I view this as essentially, either

3 counsel can correct me if I'm wrong, as an oral amendment or

4 addition to the plea agreement; is that how you view it?



5 MR. TRABOLD: Yes, I agree with the court that you

6 need to get some agreement from Mr. Proctor on the record.

7 THE COURT: All right. Mr. Proctor, you've just

8 heard what Mr. Trabold has said and what Mr. Patton has said

9 concerning the agreement that has been entered into concerning

10 your period of incarceration. Do you agree that what both Mr.

11 Trabold and Mr. Patton said accurately describes what you have

12 agreed to?

13 THE DEFENDANT: Yes.

14 THE COURT: All right. And is my understanding

15 correct, that you are in full agreement with the agreement as

16 described by Mr. Patton and the government?

17 THE DEFENDANT: Yes.

18 THE COURT: And have you had a full opportunity to

19 discuss the terms and conditions of that agreement with your

20 counsel?

21 THE DEFENDANT: Yes.

22 THE COURT: All right. Then while I'm not bound by

23 the terms of the agreement and could reject it, I find, for the

24 reasons that I will put forth on the record presently, that the

25 agreement as to the term of incarceration is appropriate.

1 You can take a seat, sir. The record should reflect that I  
2 received this afternoon three pieces of correspondence written  
3 on Mr. Proctor's behalf, which I have read and reviewed. Mr.  
4 Patton.

5 MR. PATTON: Your Honor, obviously the length of the  
6 term of incarceration has already been dealt with. And your  
7 Honor has agreed that this agreement between the parties is an  
8 appropriate sentence of imprisonment.

9 The next issue is the length of any term of  
10 supervised release. The statute allows you to apply a term of  
11 supervised release for any years or up to life. I would submit  
12 that a term of supervised release of life is not necessary in  
13 this case. As you have done in other cases of this nature,  
14 that a term of supervised release of seven years or something  
15 in that area would be appropriate to monitor Mr. Proctor. He  
16 is going to be spending approximately 16-and-a-half years in  
17 prison, and if you put him on supervised release for seven  
18 years in addition to that, you're talking about a total of 23  
19 years either incarcerated or under the supervision of the  
20 United States Probation Office. And I would submit to you that

21 if Mr. Proctor successfully completes seven years of supervised  
22 release, he will have demonstrated that he is not a danger to  
23 the community and that he would not need to be on any further  
24 term of supervised release.

25 I believe that the presentence report makes clear

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1 that Mr. Proctor does not have the ability to pay a fine, I  
2 would ask that you waive a fine in this case.

3 I would ask that you recommend to the Bureau of  
4 Prisons that Mr. Proctor be housed as close to the Erie area as  
5 possible so that he can be as close to his wife as possible.

6 THE COURT: I'll make that recommendation.

7 MR. PATTON: Your Honor, there is going to be a  
8 disagreement among the parties as to whether or not Mr. Proctor  
9 should be allowed to self-report.

10 THE COURT: Why don't we do it this way. Let me  
11 hear from the government on that first, then I'll hear from  
12 you.

13 MR. PATTON: All right.

14 THE COURT: Does your client have anything he would

15 like to say?

16 MR. PATTON: Yes, judge.

17 THE DEFENDANT: I'd like to apologize to the court  
18 for my actions. I'm sorry for my actions, and I will never do  
19 it again.

20 THE COURT: All right. Thank you, Mr. Proctor.

21 All right, Mr. Trabold.

22 MR. TRABOLD: Your Honor, I agree with counsel that  
23 my comments that I'm about to make are really just obviously  
24 directed towards the length of his supervised release. It's  
25 the government's position that in light of the circumstances of

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1 this case, which are obviously highly troubling and highly  
2 significant, you should impose a term of supervised release of  
3 life on Mr. Proctor for a variety of different reasons.

4 First, as the presentence report indicates, Mr.  
5 Proctor's background is highly troubled. He has a prior child  
6 sex conviction against a 13-year-old victim. He has a prior  
7 corruption of minors conviction involving furnishing alcohol to  
8 a minor. And a prior disorderly conduct conviction where the

9 basis for the conviction was his furnishing of alcohol to a  
10 17-year-old. That, on top of the conviction we're here on  
11 today, indicates an individual that obviously has a keen sexual  
12 interest in children that he's having a great deal of  
13 difficulty getting under control.

14 We discussed, obviously, the guidelines and the  
15 application of the guidelines to Mr. Proctor's case. But  
16 what's troubling about the application of the guidelines to Mr.  
17 Proctor is he essentially qualifies for every enhancement in  
18 offense level contemplated in the guidelines. He used a  
19 computer during the commission of the offense. He distributed  
20 images of child pornography with the expectation of a return of  
21 like images. His images involve multiple images of  
22 prepubescent minors, some of the images are of extremely young  
23 children. He qualifies and, in fact, the presentence report  
24 accords him the enhancement for having images involving sadism  
25 or sadomasochism. In fact, the one image that he has, that is

1 specifically referenced in the presentence report, is of a  
2 young child naked in a bondage fixture.

3 Finally, he has been accorded under the guidelines  
4 the enhancement for having 150 to 300 images. So it's not as  
5 if Mr. Proctor's conduct in this case is limited to a small  
6 number of images.

7 The other thing I want to make the court aware of,  
8 which I've marked as Government Exhibit No. 1, which I've  
9 provided to counsel, is a document that was found on the hard  
10 drive of Mr. Proctor's computer. Which, for lack of a better  
11 term, I'll call the Boy Lover manifesto. This is a document  
12 that in my experience I have, law enforcement investigators  
13 have found in a number of these child pornography cases on the  
14 hard drives of people that have been convicted before your  
15 Honor of child pornography related offenses. And, essentially,  
16 what it amounts to is an explanation or justification for why  
17 an adult male would be interested in having sexual relations  
18 with boys. And it goes on at length to talk about how  
19 pedophilia or calling somebody a child molester isn't really  
20 appropriate and why in ancient Greece this type of activity is  
21 appropriate. I want to introduce that as an exhibit and make  
22 the court aware of it simply because it bears on his  
23 willingness and the likelihood that he will rehabilitate

24 himself. That document indicates to me that Mr. Proctor

25 doesn't really think there's anything all that wrong with the

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1 conduct that he engaged in this case and in the past, and that

2 bears on the length of his supervised release. Because if he's

3 trying to find justifications for his behavior and believes his

4 behavior is justified, then it's troubling to me to some day

5 let him out in a situation where he's not going to be under a

6 period of supervised release, because it's indicative of a

7 person that isn't all that interested in rehabilitating

8 themselves because he doesn't really think he's done anything

9 wrong.

10 When you get to the point of supervised release, the

11 goal is to give the person a period of time out in the public

12 where they can rehabilitate themselves and get used to living a

13 normal law-abiding life. The difficulty with that in Mr.

14 Proctor's case is Mr. Proctor has, over the past number of

15 years, indicated little to no willingness whatsoever in

16 rehabilitating himself. He was given the opportunity on

17 multiple prior occasions to come to grips with his obvious

18 sexual interest in children and set it aside and move on in his  
19 life, he's obviously not been able to do that. He hasn't shown  
20 really all that much interest in doing that.

21 We ask simply that you impose a term of supervised  
22 release of life on him because the segment of society that he  
23 is endangering once he, if he ever gets off of supervised  
24 release, is the most vulnerable segment of society. And I  
25 would hate to see Mr. Proctor some day get off of supervised

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1 release, after he serves his 16-and-a-half years and after he  
2 serves whatever lesser term of supervised release you might  
3 impose, and it would be a tragedy for him to get off of  
4 supervised release having learned nothing, as he has learned  
5 nothing to date, and victimizing another child. I just don't  
6 think that needs to happen, and I think you have the  
7 opportunity to prevent that from happening. At least,  
8 hopefully, go a long way towards preventing that from happening  
9 if you impose a term of supervised release of life on him.

10 The only other thing I'll talk about is whether Mr.  
11 Proctor should report today. It's our very strong position



12 that he absolutely should report today because this case has  
13 been pending for a very long period of time. And there can be  
14 no question that not only does Mr. Proctor represent an extreme  
15 danger to the community, but Mr. Proctor has had a long period  
16 of time to get his affairs in order, and he doesn't need any  
17 more time. Whatever affairs he needed to get in order, he  
18 should have had that done well in advance of coming into court  
19 here today, and we ask that you to make him report to jail  
20 today.

21 THE COURT: All right. Mr. Patton, do you want to  
22 come on up.

23 MR. PATTON: Your Honor, with regard to the  
24 government's argument on life supervised release, I think  
25 somewhat of what I'm going to argue here and address that, is

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1 that Mr. Proctor has been on bond for two years. He was placed  
2 on bond on January 12, 2005. So pretty close to two years to  
3 today. Now, there have been lengthy delays. But if you recall  
4 at the outset of the case, there was a lengthy delay while  
5 there was litigation of whether or not the court would order

6 the government to provide a copy of the hard drive directly to  
7 defense counsel. That litigation took months and months and  
8 months. And then some of the delay was due to the computer  
9 expert who I had hired dying. So I had to get another computer  
10 expert. The government continued the sentencing and so on.  
11 This isn't just a case that we have been continuing this to try  
12 and avoid Mr. Proctor having to deal with this. It has been  
13 legitimate issues that we've had to deal with. But for the  
14 past two years Mr. Proctor has not had a single violation of  
15 his bond. There isn't any report from Pretrial Services that  
16 Mr. Proctor hasn't followed the conditions of his bond. And  
17 following his guilty plea --

18 THE COURT: What were the material conditions of his  
19 bond?

20 MR. PATTON: Initially the conditions were that he  
21 report to Pretrial Services weekly. That he have no contact  
22 with minors, except for supervised visits with his children,  
23 which have not happened now, because the children, the Office  
24 of Children and Youth have taken the children out of the home  
25 and the parental rights have been terminated, so that hasn't

1 been an issue. And that he was restricted from computer use in  
2 connection with the Internet. Now, following the guilty plea  
3 before your Honor, your Honor changed those conditions and  
4 placed Mr. Proctor on home confinement with electronic  
5 monitoring. Since the time of the guilty plea, which I don't  
6 have that date in front of me --

7 THE COURT: I believe it was in March.

8 MR. PATTON: Since then he's been on home  
9 confinement with electronic monitoring, and has not violated  
10 the terms of that electronic monitoring. And has not posed any  
11 danger or risk. Now, Mr. Trabold talked about that Mr. Proctor  
12 has had time to get his affairs in order and that is generally  
13 true. But in October of last year Mr. Proctor was diagnosed  
14 with deep vein thrombosis. Which essentially is a blood clot  
15 in one of the deep veins in the leg. And he is being treated  
16 by Dr. David Fox. The standard treatment for that is blood  
17 thinners.

18 THE COURT: Heparin or something?

19 MR. PATTON: Yes. He's actually on Coumadin.  
20 The concern with having Mr. Proctor report to the Erie County  
21 Prison is that Mr. Proctor is on numerous medications. He has

22 them here with him today, it's a bag full of medications, both  
23 for this condition and he's also on mental health medication.

24 And Dr. Fox writes in his letter that it would be better that

25 Mr. Proctor should not -- he says "you should not discontinue

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1 your Coumadin therapy even for a short period of time as it  
2 will place a great risk for further complications to your  
3 health." I will provide a copy of this letter to your Honor.

4 I also spoke with the psychiatrist that Mr. Proctor  
5 has been seeing at Stairways Behavioral Health. He was trying  
6 to get a letter to me, but he just had not gotten it to me.

7 One of the medications that Mr. Proctor is on is Effexor. The  
8 psychiatrist tried to explain it to me as to how those two  
9 drugs interact. But the bottom line is they impact on one  
10 another, and if you would stop taking the Effexor with the  
11 Coumadin, that that's not a good thing.

12 My concern is that the Erie County Prison will not  
13 allow Mr. Proctor, under their standard operating procedures,  
14 to bring any medication into that facility with him. Even if  
15 he takes that bag with him with all of his prescriptions, they

16 won't let it into the facility.

17 THE COURT: How is someone medicated there then?

18 MR. PATTON: Well, they have to wait until they get

19 seen by the doctor at the prison and the doctor comes once a

20 week. And if you miss him, you have to sit there and wait

21 until he comes again. Then the doctor has to see the person,

22 decide what prescriptions to do, and then there's a lag time

23 between getting those prescriptions. So if he is taken into

24 custody today, his Coumadin is going to be -- he's going to

25 stop taking his Coumadin for a period of time, because they

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1 will not let him bring the medication in. And his doctors

2 indicated that is potentially very seriously dangerous to Mr.

3 Proctor's health.

4 THE COURT: Are you saying that if he went over

5 there today, and if the luck of the draw was that the prison

6 physician didn't come around again for another week, he just

7 missed him by a few hours, he'd get no medication over the next

8 week?

9 MR. PATTON: Yes, that has been my experience with

10 Erie County. And, look, I'm not trying to say that Erie County  
11 is deliberately trying to ignore the medical needs of the  
12 inmates, but it's the reality of the situation that they have  
13 their doctor come, who's contracted with them, he comes once a  
14 week. Obviously, they have some nursing staff at the facility,  
15 but none of those individuals are authorized or qualified to  
16 write prescriptions. And so that if Mr. Proctor is ordered  
17 into custody and Erie County Prison does not allow him to bring  
18 in his medications, there's going to be a real direct threat to  
19 Mr. Proctor's health. And so if you look at that and decide,  
20 all right, is he a flight risk. Well, as your Honor knows, the  
21 parties have reached this agreement as to this agreed sentence  
22 sometime ago, over a month ago. Mr. Proctor has known for over  
23 a month that when he came to be sentenced today, he was going  
24 to be facing a sentence of 16-and-a-half years. And he's here.  
25 If he was going to try and run or going to try and hide, he

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1 would have done it.

2 As far as being a danger to the community, if he is  
3 in his home being monitored with an electronic monitor and he

4 has shown through the course of almost a year that he will  
5 follow those conditions, there are no children in the home, all  
6 the children have been taken out of the home by the Office of  
7 Children and Youth, that he is not going to present a danger.  
8 The danger he presents today is no different than the potential  
9 danger that was present from March of last year through today.  
10 The conditions of bond that were imposed on him have been  
11 scrupulously followed by Mr. Proctor. And when those  
12 conditions are being followed, he doesn't present a danger.

13 The Marshals can ask the Bureau of Prisons for an  
14 expedited designation of Mr. Proctor. To try and speed up the  
15 designation process, so that he gets designated as promptly as  
16 possible. Short of that, if you're going to order him into  
17 custody, there's really going to be a real risk to his health.  
18 And I would move for the admission of Defendant's Exhibit A,  
19 which is the letter from Dr. David Fox.

20 THE COURT: Do you want to bring it up. All right,  
21 I'm going to take a short recess and then come back out.

22 (Recess from 1:58 p.m.; until 2:15 p.m.)

23 THE COURT: Who's on the line, please, this is Judge  
24 McLaughlin?

25 DEPUTY WARDEN KINNANE: Deputy Warden Kinnane from

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1 the Erie County Prison.

2 THE COURT: Swear him in, please.

3 DEPUTY CLERK: Would you please raise your right  
4 hand.

5 VINCE KINNANE, WITNESS HEREIN, SWORN

6 THE COURT: Deputy Warden Kinnane, I don't know if  
7 counsel had an opportunity to fill you in on the nature of the  
8 problem here. But we're in the middle of a sentencing hearing  
9 and I have a defendant here who has a grab bag of various type  
10 of medications. And I'm informed through a letter by one of  
11 his doctors that it is necessary that he continue to receive  
12 this medication at regular intervals due to various health  
13 concerns. Mr. Patton, who represents Mr. Proctor, tells me  
14 that his concern is although he has a bag of medicine, he will  
15 not be permitted to take the medicine if he's incarcerated at  
16 the Erie County Jail and may not be able to take the medicine  
17 until the next time the prison doctor comes through, which  
18 could be as long as a week. So I thought rather than speculate



19 on it, I would try to get some direction from someone in a

20 position of authority. What can you tell me about that?

21 DEPUTY WARDEN KINNANE: Anybody that brings

22 medication into the facility, we would not accept the

23 medication for their use due to the fact we couldn't verify

24 what it was. However, we would have them sign a release of

25 information form, if they didn't come with a medical transfer

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1 sheet. Where we would contact the doctor or clinic or whatever

2 facility he was being treated through. Verify that the

3 medication that he or she claims they're on is what they should

4 be taking. At that point, if we don't have it in our

5 pharmaceutical stock here, we will have a pharmacy deliver it.

6 I told Mr. Patton just a few minutes ago that in most cases

7 that can happen the same day. In some extreme cases it may be

8 overnight. Clearly, with the critical medication, we would

9 make arrangements through Hamot or Saint Vincent's pharmacies

10 or something like that to get it in.

11 THE COURT: So in this case are you telling me that

12 Mr. Proctor, if he were to report, Mr. Proctor's medical needs,

13 insofar as it relates to medication, could be promptly

14 addressed?

15 DEPUTY WARDEN KINNANE: Yes, your Honor.

16 THE COURT: Thank you, very much. Good-bye, sir.

17 (Discussion held off the record between the

18 Defendant and Defense Counsel.)

19 THE COURT: Mr. Patton, is there anything else

20 before we proceed to sentencing in the case?

21 MR. PATTON: No, your Honor. Defense Exhibit A is

22 the only copy of the letter that I have and if you are going to

23 order Mr. Proctor into custody, I'd ask we get a copy of that

24 to the Marshals so they'll be able to take it.

25 THE COURT: Are you talking about the letter from

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1 Dr. Fox?

2 MR. PATTON: Yes, sir.

3 THE COURT: We'll give that back to you. We'll make

4 a copy and make that part of the record.

5 In fashioning a sentence post Booker, I am still, of

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6 course, required to consider the guideline ranges which are now

7 advisory. And in addition to the guidelines, I must also  
8 consider other factors set forth at 3553(a), which requires the  
9 court to impose a sentence that is "sufficient, but not greater  
10 than necessary" to comply with the purposes that are set forth  
11 in paragraph two. Section (a)(2) states that those purposes  
12 include:

13 To reflect the seriousness of the offense, to  
14 promote respect for the law, and to provide just punishment for  
15 the offense;

16 To afford adequate deterrence from criminal conduct;

17 To protect the public from further crimes of the  
18 defendant; and to provide the defendant with needed educational  
19 or vocational training, medical care, etc.

20 Section 3553(a) further directs the sentencing court  
21 to consider the nature and circumstances of the offense and the  
22 history and characteristics of the defendant; the types of  
23 sentences available; the need to avoid unwanted sentencing  
24 disparities among defendants with similar records who have been  
25 found guilty of similar conduct; and the need to provide

1 restitution, if applicable.

2 In fashioning the sentence in this case, I have  
3 considered all of those factors. First, this offense by its  
4 nature is very serious. In addition to other offenses, I note  
5 that the defendant does have a previous conviction for indecent  
6 assault and corruption of minors involving a sexual assault  
7 perpetrated on a 13-year-old girl. I note, also, there is a  
8 corruption of minors conviction involving the supplying of  
9 alcohol to a 13-year-old minor.

10 Pursuant to Application Note 2 of United States  
11 Sentencing Guidelines 2G2.2:

12 "If the defendant engaged in the sexual abuse or  
13 exploitation of a minor at any time, whether or not  
14 such abuse or exploitation occurred during the  
15 course of the offense or resulted in a conviction  
16 for the conduct, and Subsection (b)(4) does not  
17 apply, an upward departure may be warranted."

18 Here I find that a three-level upward departure is  
19 warranted beyond the advisory guideline range, given the  
20 previously-described incident of assault and, particularly,  
21 given its egregious nature.

22 The record reflects that this defendant does have a  
23 long history of preying on children. The protection of the  
24 public from further crimes of this defendant, given his record,  
25 is in my view a major consideration in fashioning this

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1 sentence. As well as the need to provide just punishment.

2 In fashioning this sentence, I have also considered  
3 the importance of its deterrent effect.

4 Insofar as it relates to the question of supervised  
5 release, given this defendant's criminal history, which  
6 includes in part sexually assaultive behavior against minors,  
7 and an inability to reform his conduct, I am unwilling to run a  
8 risk with this defendant relative to the issue of supervised  
9 release.

10 Would you stand for sentencing, please. Pursuant to  
11 the Sentencing Reform Act of 1984, and in part supported by the  
12 provisions of United States Sentencing Guideline 2G2.2,  
13 Application Note 2, it's the judgment of this court that the  
14 defendant, Keith Allen Proctor, is hereby committed to the  
15 custody of the Bureau of Prisons to be imprisoned for a term of

16 198 months. This term consists of 198 months at each of Counts

17 One and Two, and a term of 120 months at Count Three, to be

18 served concurrently.

19 Upon release from imprisonment, the defendant shall

20 be placed on supervised release for a term of life. This term

21 consists of terms of life on each of Counts One, Two and Three,

22 all such terms to run concurrently.

23 Within 72 hours of release from the custody of the

24 Bureau of Prisons, the defendant shall report in person to the

25 Probation Office in the district to which this defendant is

24

1 released.

2 While on supervised release, the defendant shall not

3 commit another federal, state or local crime, shall comply with

4 the standard conditions of supervision recommended by the

5 Sentencing Commission and adopted by this court, and shall

6 comply with the following additional conditions:

7 The defendant shall not illegally possess a

8 controlled substance.

9 The defendant shall not possess a firearm or

10 destructive device.

11       The defendant shall participate in a program of  
12 testing and, if necessary, treatment for substance abuse as  
13 directed by the probation officer, until such time as the  
14 defendant is released from the program by the probation  
15 officer. Further, the defendant shall be required to  
16 contribute to the costs of services for any such treatment in  
17 an amount determined by the probation officer, but not to  
18 exceed the actual cost. The defendant shall submit to one drug  
19 urinalysis within 15 days after being placed on supervision and  
20 at least two periodic tests thereafter.

21       The defendant shall participate in a mental health  
22 treatment program and/or sex offender treatment program as  
23 approved and directed by the probation officer. The defendant  
24 shall abide by all program rules, requirements and conditions  
25 of the sex offender treatment program, including submission to

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1 polygraph testing, to determine if he is in compliance with the  
2 conditions of release.

3       In accordance with Title 18, U.S.C. Section 3583(d)

4 and Section 4042(c)(4), the defendant shall report the address

5 where he will reside and any subsequent change of address to

6 the probation officer responsible for the defendant's

7 supervision and, further, the defendant shall register as a

8 convicted sex offender in any state where he resides, is

9 employed, carries on a vocation, or is a student.

10 The defendant shall not possess any materials,

11 including pictures, photographs, books, writings, drawings,

12 videos or video games depicting and/or describing child

13 pornography as that term is defined at 18 U.S.C. Section

14 2256(2).

15 The defendant shall not possess any materials,

16 including pictures, photographs, books, writings, drawings,

17 videos or video games depicting and/or describing child

18 pornography as defined at 18 U.S.C. 2256(8).

19 The defendant shall not associate with children

20 under the age of 18, except in the presence of a responsible

21 adult who is aware of the nature of the defendant's background

22 and current offense and who has been approved by the probation

23 officer.

24 The defendant shall consent to the U.S. Probation

25 Office conducting periodic unannounced examinations of his



1 computer system, which may include retrieval and copying of all  
2 memory from hardware/software and/or removal of such system for  
3 the purpose of conducting a more thorough inspection and will  
4 consent to having installed on his computer, at his expense,  
5 any hardware/software to monitor his computer use or prevent  
6 access to particular materials. The defendant shall consent to  
7 periodic inspection of any such installed hardware/software to  
8 insure that it is functioning properly.

9       The defendant shall provide the U.S. Probation  
10 Office with accurate information about his entire computer  
11 system (hardware/software), all passwords used by him, and his  
12 Internet service provider and will abide by the rules of the  
13 Computer Restriction and Monitoring Program.

14       The defendant shall submit his person, residence,  
15 place of business, computer and/or vehicle to a warrantless  
16 search conducted and controlled by the United States Probation  
17 Office at a reasonable time and in a reasonable manner, based  
18 upon a reasonable suspicion of contraband or evidence of a  
19 violation of a condition of release. Failure to submit to a

20 search may be grounds for revocation. The defendant shall  
21 inform any other residents that the premises and his computer  
22 may be subject to a search pursuant to this condition.

23 The defendant is prohibited from operating Internet  
24 Web sites containing child pornographic materials.

25 The defendant shall cooperate in the collection of

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1 DNA as may be directed by the probation officer.

2 It is further ordered that the defendant shall pay  
3 to the United States a special assessment of \$300, which shall  
4 be paid to the United States District Court Clerk forthwith.

5 I find that the defendant does not have the ability  
6 to pay a fine, so I will waive a fine in this case.

7 Mr. Proctor, do you understand that you have the  
8 right to appeal this sentence that I imposed here today, but if  
9 you choose to do so, you must do so within 10 days; do you  
10 understand that, sir?

11 THE DEFENDANT: Yes.

12 THE COURT: All right. Particularly given, in light  
13 of the conversation I had with the Deputy Warden and given the

14 length of time that this case has been pending, I am going to  
15 direct that the defendant be committed to the custody of the  
16 United States Marshals at this time.

17 MR. PATTON: Your Honor, so the record is clear, I  
18 would object to the condition that Mr. Proctor consent to a  
19 search, that his failure to consent could be a basis for  
20 revoking.

21 THE COURT: That is noted. In the event it wasn't  
22 picked up, I'll put it on the record now to make it clear.  
23 Let me make a recommendation that Mr. Proctor be incarcerated  
24 as close to Erie, Pennsylvania as is practicable.

25 MR. TRABOLD: Your Honor, just so the record is

28

1 clear, I want to make sure that the record reflects that I  
2 moved for the admission of Government Exhibit 1.

3 THE COURT: You did and it's admitted. We're  
4 adjourned.

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6 (Whereupon, at 2:30 p.m., the Sentencing proceedings  
7 were concluded.)

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C E R T I F I C A T E

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5 I, Ronald J. Bench, certify that the foregoing is a

6 correct transcript from the record of proceedings in the

7 above-entitled matter.

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13 Ronald J. Bench

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